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Solicitor Abigail Fogg reports on recent changes to the law on solitary confinement

Segregation is supposed to be the last resort. It should only be used as a short term punishment (maximum 14 days after an adjudication) or as a short term measure to ensure the safety of prisoners and prison staff.

However, segregation has been increasingly used as a long term measure to avoid difficult decisions in complex circumstances.

Prisoners who are held in segregation are often isolated in cells for up to 23 and a half hours a day. This prevents them accessing education, employment, offender behaviour courses and from pursuing their rehabilitation programme.

The use of long term segregation has been steadily increasing as there have been cuts to prison staff to deal with complex situations. Sadly, there has also been an alarming increase in depression, self-harm and suicides in prisons.

Nelson Mandela was famously held in solitary confinement for many years. This was largely because the prison feared the 'influences' he

was having on other prisoners. He experienced great hardships including hard labour in a quarry, but he considered solitary confinement to be the worst:

“I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one’s mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything?”

The effects of long term segregation on mental health are well known. The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007, said the following:

“solitary confinement may cause serious psychological and sometimes physiological ill effects. Research suggests that between one third and as many as 90% of prisoners experience adverse symptoms in solitary confinement. A long list of symptoms ranging from insomnia and confusion to hallucinations and psychosis has been documented. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions.”

In a further UN report it was warned that:

“some of the harmful psychological effects of isolation can become irreversible.”

The Supreme Court made a significant ruling recently in the case of Bourghass that segregation that continued after 72 hours must be approved by the Secretary of State and not the Governor of the prison.

The ruling stated that prisoners must be given valid reasons for them being moved to segregation and given the chance to put forward representations to move back to the ordinary wings. In the cases where prisoners cannot be given the full reasons for segregation due to security reasons they must be given the ‘gist’ of the reasons and allowed to respond accordingly.

The prison must consider all alternative measures before resorting to segregation. These measures are to include transfers to other wings, to another prison, to a CSC, or to a Dangerous and Severe Personality Disorder Unit; or closer supervision on normal location, which might include constant CCTV

observa- tion, and resort to powers to use physical force so far as necessary; or the use of an incentives and earned privileges scheme.

The ruling sent a loud message that long term segregation can only be used in rare and extreme circumstances and cannot be relied upon as a measure to keep good order and discipline at prisons.

The case follows global concern that segregation or solitary confinement amounts to degrading inhumane treatment and in some cases torture. The UN has issued new guide- lines to set new international standards for treatment of prisoners which include limits on solitary confinement. They have indicated that any period past 14 days can only be justified in rare and extreme circumstances and cannot be the norm. These new guidelines are being called the 'Mandela rules' which shows that his legacy continues in prisons today.

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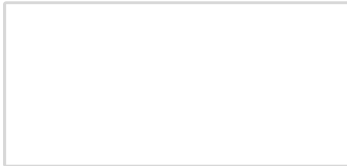
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